

UNITED STATES DISTRICT COURT

DISTRICT OF RHODE ISLAND

PREPARED MEDIA LABORATORIES, INC.

v.

C.A. NO. 94-0276-T

TROY BIOLOGICALS, INC.

**MEMORANDUM AND ORDER**

This is an action to recover an amount allegedly due on book account for goods sold and delivered. It is presently before the Court for consideration of the defendant's motion to dismiss for lack of jurisdiction, or, in the alternative, to transfer pursuant to 28 U.S.C. § 1404(a).

A Magistrate Judge has recommended that the motion be denied. This Court accepts that portion of the recommendation calling for denial of the motion to dismiss but, for reasons hereinafter stated, grants the motion to transfer.

**Background**

Troy Biologicals, Inc. (Troy) is a Michigan corporation that supplies microbiological products to hospitals and laboratories. In 1990, Adams Scientific, Inc. (Adams), a Rhode Island manufacturer of microbiological products, approached Troy and

persuaded Troy to purchase some of the products manufactured by Adams.

Troy continued purchasing products from Adams for a period of approximately four years. Adams manufactured the products in Rhode Island and shipped them either directly to Troy at its place of business in Michigan or to Adams' distribution facility in Michigan which provided support and backup for Troy's needs as Adams' customer.

In 1994, Adams experienced financial difficulties and all of its assets were acquired by Prepared Media Laboratories, Inc. (PML), an Oregon corporation. In this suit, PML claims that Troy owes approximately \$250,000 for goods sold and delivered to it by Adams.

The Magistrate Judge correctly determined that Troy's contacts with Rhode Island are sufficient to subject it to the personal jurisdiction of this Court. Therefore, the only issue to be addressed is whether the case should be transferred to the Eastern District of Michigan pursuant to 28 U.S.C. § 1404(a).

#### Discussion

Section 1404(a) states: "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action any civil action to any other district or division where it might have been brought."

Generally, a plaintiff's choice of forum is entitled to

great weight and should be disturbed only under exceptional circumstances. Blinzler v. Marriott International, Inc., 857 F.Supp. 1, 3 (D.R.I. 1994). Thus, a party seeking transfer pursuant to § 1404(a) bears the burden of establishing:

1. The availability of an alternative forum in which the plaintiff may litigate its claim and

2. That the alternative forum is more convenient for the parties and witnesses and

3. That transfer will serve the interests of justice.

Boothroyd Dewhurst, Inc. v. Board of Trustees of Leland Stanford Junior University, 1993 WL 385713, \*6 (D.R.I. 1993); U.S. Fidelity and Guar. v. Republic Drug, 800 F.Supp. 1076, 1079 (E.D.N.Y. 1992); McDevitt & Street Co. v. Fidelity & Deposit Co., 737 F.Supp. 351, 353 (W.D.N.C. 1990).

In this case, it is clear that Troy is amenable to suit in the Eastern District of Michigan and that PML may litigate its claim in that forum. Therefore, the issue is whether a transfer will serve the convenience of the participants and the interests of justice.

In making the determination, a variety of factors of both private and public concern must be considered. Gulf Oil Co. v. Gilbert, 330 U.S. 501, 508 (1947). The private factors include (1) the relative ease of access to sources of proof; (2) the availability of compulsory process for the attendance of

unwilling witnesses; (3) the cost of obtaining the attendance of willing witnesses; (4) the possible need for a view of the premises; and (5) such other factors as may make the trial easier, more expeditious and less expensive. Among the public factors to be considered are (1) the interest in having local controversies adjudicated locally; (2) which forum is more familiar with and appropriate for resolution of the legal questions raised; (3) the relative congestion of the Courts' trial calendars; and (4) ease of administration. Id. Unless the balance of these factors weighs heavily in favor of transfer, a plaintiff's choice of forum rarely should be disturbed. Id.

Here, the public factors enumerated in Gilbert are essentially neutral. No complex questions of state law are presented that would be resolved more suitably in either forum. Moreover, it does not appear that the selection of forum will have any effect on the manner in which the case is administered.

However, the balance of convenience weighs heavily in favor of transfer. The complaint and the affidavits filed by the parties establish that Troy is a Michigan corporation having its sole place of business in Michigan. Troy has no presence in Rhode Island and its only contacts with this jurisdiction have been its dealings with Adams. PML, on the other hand, is an Oregon corporation that maintains a place of business in Michigan. It still has a distribution facility in Rhode Island

but, apparently, no longer manufactures its products here.<sup>1</sup>

In addition, all of Troy's witnesses and records are located in Michigan and none of Adams' former employees identified by Troy as the individuals with which it dealt reside in Rhode Island. Indeed, an affidavit submitted by one of those former Adams employees establishes that she resides in California. Her affidavit recites her "belief" that a number of former Adams employees who are "familiar" with the Troy account reside in Rhode Island. However, PML has presented nothing to corroborate that "belief". Nor has it furnished any indication that any of those individuals would be witnesses at trial. For purposes of § 1404(a), it is not sufficient to merely list possible witnesses and their locations. Section 1404(a) requires an assessment of the significance of a prospective witness's testimony in relation to the issues in the case and the likelihood that the witness will be called upon to appear and testify. Houk v. Kimberly-Clark Corp., 613 F.Supp. 923, 928 (W.D.Mo. 1985) (citations omitted). Consequently, it is incumbent upon the parties to state with particularity what witnesses are to be called, the nature and importance of their testimony and the extent of the inconvenience that will be visited upon them if the motion to

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<sup>1</sup>Troy's affidavit recites its "understanding" that to the extent PML's operations involve the former assets of Adams, they are being managed and directed from PML's principal place of business in Oregon.

transfer is granted or denied. See, Blinzler, 857 F.Supp. at 3; Salperto v. Pohlada, 1994 U.S. Dist. Lexis 161, \*7 (D.Del. 1994); Essex Crane Rental v. Vic Kirsch Construction, 486 F.Supp. 529, 535 (S.D.N.Y. 1980).

PML's affidavits are equally vague with respect to the location of the records regarding Adams' dealings with Troy. Once again, they merely assert a "belief" that one of PML's employees in Rhode Island has "records concerning the Troy account".

Conclusion

For all of the foregoing reasons, I find that the balance of convenience weighs heavily in favor of transfer. Therefore, the defendant's motion to transfer this case to the Eastern District of Michigan is hereby GRANTED.

IT IS SO ORDERED,

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Ernest C. Torres  
United States District Judge

Date: \_\_\_\_\_, 1995